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No. 83-2126

In The
Supreme Court of the United States
October Term, 1983

THE STATE OF OKLAHOMA,
Petitioner,

vs.

TIMOTHY R. CASTLEBERRY,

and

NICHOLAS RAINERI,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

C. KENT ELDRIDGE*
CHARLES FOSTER COX
Attorneys at Law
500 NW 13th Street
Oklahoma City, OK 73103
(405) 235-7507
Attorneys for Respondent

*Counsel of Record

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QUESTIONS PRESENTED

1. Whether, under the Fourth Amendment, and the dictates of *United States v Ross*, 456 U.S. 798 (1982), a warrant is required to search a specific container in a vehicle, when the police have probable cause to believe the container secrets contraband but no probable cause to believe the vehicle itself contains contraband.

2. Whether the police may search a locked vehicle, parked on a private parking lot, and the containers found inside, as an incident to the lawful arrest of a person standing next to the vehicle but not a recent occupant of said vehicle.

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Respondents Timothy R. Castleberry and Nicholas Raineri hereby submit the following Brief in Opposition to the Petition for a Writ of Certiorari to the Oklahoma Court of Criminal Appeals filed by Petitioner State of Oklahoma.

STATEMENT OF THE CASE

Although the statement of the case in the Petition contains an essentially accurate review of the facts of the case, the Respondents would supplement that statement with several important facts that were not mentioned. Respondents would refer to the transcripts of the two trials in the same manner as the Petitioner. The transcript of proceedings held on September 1-2, 1981, wherein both respondents were tried for possession of contraband found in the suitcases (F-82-227) will be referred to as Tr. I, and the transcript of proceedings held on September 23-24, 1981, wherein respondent Castleberry was tried for possession of contraband found in the band-aid box (F-82-228) will be referred to as Tr. II.

The arresting officer admitted that he had the situation "under control" at the time back-up officers arrived. (Tr. I, 20). The officer also admitted that at the time of the search of the trunk, both respondents were not close to the trunk and were either on the ground or at the front of the vehicle with their hands upon it. (Tr. I, 21). He further admitted that at the time of the search neither respondents had access to the keys to the vehicle (Tr. I, 21) and at the time of the search he felt no personal jeopardy from the respondents. (Tr. I, 23). The officer further testified that at the time of the searches, neither respondent had any opportunity to get into the car themselves so as to reach a weapon or destroy evidence. (Tr. II, 52).

REASONS FOR DENYING THE WRIT

I. The Opinion Of The Oklahoma Court Of Criminal Appeals Is Just, And Correctly Ruled That The Warrantless Search Of The Locked Suitcases In The Trunk Of The Vehicle Was Not Justified Under The "Automobile Exception" To The Warrant Requirement Of The Fourth Amendment To The United States Constitution.

The Oklahoma Court of Criminal Appeals correctly held that the mere fact that the suitcases in question had been placed in the trunk of a vehicle did not turn this into an "automobile exception" case. It must be remembered that this vehicle was not stopped upon the roadway, but was, instead, parked at all times in a parking lot of a motel and was never mobile; that the vehicle was never occupied by either of the respondents; that the arresting officers had no probable cause to believe that the vehicle itself contained anything illegal, and had such probable cause only as to suitcases; and that the State of Oklahoma failed to prove that there was any "exigency" which required such prompt action as to render a warrant unnecessary.

Contrary to the contention of the Petitioner, the opinion of the Oklahoma Court of Criminal Appeals is entirely consistent with the reasoning pronounced in *United States v Ross*, 456 U.S. 798 (1982). In *Ross*, the Supreme Court undertook a careful examination of the "automobile exception", from its initial recognition in *Carroll v United States*, 267 U.S. 132 (1925), thru its inapplicability in *United States v Chadwick*, 433 U.S. 1 (1977) and *Arkansas v Sanders*, 422 U.S. 753 (1979). Through its opinion in *Ross*, the Supreme Court sought to clarify some of the

confusion surrounding the warrantless search of containers found in automobiles. The Court held that police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed *somewhere* within *it,* may conduct a warrantless search of the vehicle that is as thorough as a magistrate could authorize by warrant, including the warrantless search of any container found in said vehicle. (emphasis added). The "automobile exception" established in *Carroll,* supra, applies when the police have probable cause to believe the vehicle itself contains contraband, but do not know where within the vehicle it is located. The "automobile exception" does not apply, however, to allow the warrantless search of any movable container that is believed to contain contraband and is found in a public place, even if that container is placed in a vehicle, provided that the vehicle is not otherwise believed to be carrying contraband. Thus, the scope of the warrantless search is not defined by the nature of the container in which the contraband is hidden, but rather by the object of the search and places in which there is probable cause to believe that it may be found.

Applying the rationale of *Ross,* supra, to the case at bar, since the police had probable cause to believe that contraband was contained in suitcases, and having no probable cause to believe that contraband was contained elsewhere in the vehicle, the "automobile exception" would not operate to allow the warrantless search of the suitcases because the Respondents had a legitimate expectation of privacy in the closed container protected by the Fourth Amendment to the United States Constitution. It

was the suitcases that the police had probable cause to search, and not the vehicle itself.

The Oklahoma Court of Criminal Appeals quoted Chief Justice Burger's distinction set out in his concurring opinion in *Arkansas v Sanders,* adopted by the *Ross* court, wherein he stated that:

> It was the luggage being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in *Chadwick.* The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an 'automobile' exception case. The Court need say no more. (Citations omitted). *Id.,* at 766-767, 99 S. Ct. at 2594.

United States v Ross, 456 U.S. at 813, 102 S. Ct. at 2166-67, 72 L. Ed. 2d at 586-87.

Thus, it is urged that the Oklahoma Court of Criminal Appeals was correct in its application of the principles of *Ross,* supra, to the case at bar, and correctly stated the law when it stated:

> "If the officer has probable cause to believe that there is contraband somewhere in the car, but he does not know exactly where, he may search the entire car as well as any containers found therein. (Citations omitted). . . . If, on the other hand, the officer has only probable cause to believe there is contraband in a specific container in the car, he must obtain the container and delay his search until a search warrant is obtained." 678 P.2d at 724

The Petitioner would also argue that there is no significant difference between the facts in *Ross* and the facts

in the case at bar. It is respectively urged that there are several major differences between the facts of the two cases. In *Ross,* the police had probable cause to believe that the *auto* contained contraband, and that same was located in the trunk. (Emphasis added). In the case at bar, the police had probable cause to believe that the *suitcases* contained contraband, and had *no* probable cause as to the vehicle itself. In addition, in *Ross* the police were dealing with a mobile vehicle on the roadway, and because of that mobility, an "exigency" existed which rendered the securing of a warrant impractical. In the present case, the vehicle was never mobile, was never on the roadway, and was never occupied. As the vehicle was in the complete control of the police from the moment of Respondent's arrests, the rationale behind the "automobile exception"—that of exigent circumstances, never existed. There was no compelling reason why the police could not first secure a warrant. As probable cause alone will never satisfy a warrantless search absent the existence of "exigent circumstances", the warrantless search of the suitcases and the interior of the locked vehicle must necessarily fail. *Chambers v Maroney,* 399 U.S. 42 (1970).

The Petition further urges that the opinion by the Oklahoma Court of Criminal Appeals is in conflict not only with *United States v Ross,* supra, but is also in conflict with *Colorado v Bannister,* 449 U.S. 1 (1980), *Texas v White,* 423 U.S. 67 (1975), *Chambers v Maroney,* 399 U.S. 42 (1970), *Carroll v United States,* 267 U.S. 132 (1925), *New York v Belton,* 453 U.S. 454 (1981) and *Michigan v. Thomas,* 458 U.S. 259 (1982). It need only be pointed out, however, that each of the above cases dealt with a legitimate "automobile exception" case where police

were conducting a warrantless search of a *vehicle* based upon probable cause accompanied by the requisite emergency or "exigent circumstances" as to render the procuring of a warrant impractical. All of the cases cited involved searches of mobile vehicles upon the roadway which were occupied immediately prior to the search, and where the police were conducting a search of the entire vehicle. In none of the above cases did the police have probable cause to believe that contraband was contained within a specific container located within the vehicle, as in the case at bar. Thus, it is urged that there is no conflict with the cited cases, as each involved a different factual situation than present in the case before the Court.

In conclusion, therefore, it is respectfully urged that the "automobile exception" to the general warrant requirement of the Fourth Amendment to the United States Constitution does not justify the search of the suitcases.

II. The Search Of The Band-Aid Box Cannot Be Justified As Coming Under The "Automobile Exception" To The General Warrant Requirement Of The Fourth Amendment, Nor As A Search Incident To A Lawful Arrest.

It is a cardinal principle that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment . . . subject only to a few specifically established and well-delineated exceptions". *Katz v United States,* 389 U.S. 347 (1967). It is also settled that the fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests, "and not simply those interests found inside the four walls of the home". *Wolf*

v Colorado, 338 U.S. 25, 27 (1949). Thus, the safeguards embodied in the warrant requirement of the Fourth Amendment apply as forcefully to automobile searches as to any others. While the United States Supreme Court has recognized certain narrow exceptions to the warrant requirement for certain automobile searches, the "search incident to a lawful arrest" and the "automobile exception", the Court has upheld only those searches that were actually justified by the reasons for those exceptions.

The first judicially recognized exception to the warrant requirement for automobiles was set out in *Chimel v California,* 395 U.S. 752 (1965), wherein the Supreme Court approved a warrantless search "incident to a lawful arrest". According to *Chimel,* supra, the area that can be lawfully searched is limited to that area "within the arrestee's immediate control", from which the arrestee "might gain possession of a weapon or destructable evidence". Such an area might also be defined as that area within the arrestee's "grabbing distance". To determine if the search at bar was lawful as incident to a lawful arrest, one must assume that the arrest itself was lawful, and then proceed to apply the facts at bar to two separate inquiries:

At the *very moment of the search:*

1) *What places would it be possible for the arrestee to presently reach?*

In determining what places the arrestee could possibly reach, one must look at several considerations. Was the arrestee restrained to an extent that would prohibit him from reaching the area subsequently

searched? In the case at bar, both arrestees were restrained at the time of the search of both the suitcases and the interior of the locked automobile. Both were either handcuffed or on the ground with officers holding weapons on them; both the trunk and the interior of the auto were locked, with the police having possession of the keys; the police were positioned between the arrestees and the automobile; gaining access to the containers searched was virtually impossible because they were inside the locked vehicle and some were locked themselves; and the police had total control of the area to be searched to the exclusion of the arrestees. It is thus submitted that the items searched, the band-aid box locked in the interior and the suitcases locked inside the trunk, were not in areas that the arrestees had any possibility of presently reaching at the time of the search, and thus not within the immediate control of the arrestees. Having made that first inquiry, we must look at the facts at bar to determine:

2) *How probable is it that the arrestees would undertake to seek means of resistance or destroy evidence?*

In the case at bar, the police had no prior information that the arrestees were armed or dangerous, and the crime for which they were arrested did not involve weapons. In addition, the nature and type of evidence inside the containers searched does not lend itself to ready destructability. It would be very unlikely that the arrestees could destroy a large amount of various drugs locked inside a car while watched over by armed officers, particularly when handcuffed and ly-

ing on the ground. In addition, the arrestees made no furtive gestures which would indicate any intention of reaching for weapons or destroying evidence. To the contrary, the movements of the arrestee in closing the trunk and locking the door would operate to make any such attempt even more unlikely.

Having made these two inquiries, it can be seen that the arrestees would have to have been "possessed of the skill of Houdini and the strength of Hercules" for the areas searched to be considered within their immediate control, and thus justify a warrantless search as incident to a lawful arrest. *United States v Frick,* 490 F.2d 666 (5th Cir. 1973). It is respectfully submitted that the Respondents were not so possessed at the time of the searches and that any attempt to justify the warrantless searches on the basis of the *Chimel* exception must fail. The Oklahoma Court of Criminal Appeals, it is urged, was correct in stating:

> "The search made subsequent to the arrest, however, cannot be justified as a search incident to a lawful arrest, for it far exceeded the permissible bounds of such a search, that is, the area within the arrestee's immediate control from which he might gain possession of a weapon or destructable evidence. (Citation omitted) Both appellants were restrained,—one was handcuffed, the other was on the ground with an officer pointing a gun at him—at the time of the search. The car doors and trunk were locked, so once the officer gained possession of the keys, there was no danger of appellants' procuring a weapon or destroying evidence from the interior of the car. A search incident to the arrest would therefore justify neither a search of the locked car nor a search of the suitcases therein." 678 P.2d at 723.

The Petitioner argues that the Oklahoma Court of Criminal Appeals' opinion is in conflict with *New York v Belton,* 453 U.S. 454 (1981). However, a close examination of the facts in both cases reveals that the cases are not similar. In *Belton,* the automobile was stopped on the roadway for speeding, and the arrestee was an occupant of the vehicle. The vehicle in *Belton* was not locked and was mobile. As the Court stated in *Belton*:

> "when a policeman has made a lawful custodial arrest of the occupants of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.
>
> It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be within his reach." 453 U.S. at 460.

In the case at bar, however, the automobile was never mobile, as it was locked and parked in a private parking lot. The arrestees were not "recent occupants" of the vehicle, and, as distinguished from *Belton,* the passenger compartment, as well as the containers therein, were not within the reach of the arrestees at the time of the arrest and search. Thus, the search of the band-aid box located in the interior of the locked vehicle, to which the arrestees had no keys, cannot be justified as an "incident to a lawful arrest".

The Petitioner also advances the proposition that the search of the band-aid box can be justified as coming within the "automobile exception" to the general warrant requirement of the Fourth Amendment to the United States Constitution. As stated earlier, the "automobile excep-

tion" has been recognized as authorizing warrantless searches of vehicles under certain, narrowly defined circumstances, but it is urged that the facts of the case at bar do not justify the search of the band-aid box under the "automobile exception". As discussed in the previous section dealing with the search of the suitcases, the placing of the band-aid box in the vehicle does not, in itself, make this an "automobile exception" case.

Again, the police had no probable cause to search the vehicle itself, nor any probable cause to search the band-aid box, as their probable cause information concerned itself only with suitcases. In addition, the rationale behind the "automobile exception" requires that the vehicle be mobile on the roadway, not parked and locked, and requires the presence of some emergency or "exigency" which makes the securing of a warrant impractical under the circumstances. In the case at bar, there was no showing of any "exigent circumstances", and if any probable cause existed to search, it ran to the band-aid box itself and not to a warrantless search of the vehicle. It is urged, therefore, that this is simply not an "automobile exception" case, and that said exception will not justify the warrantless search of the locked interior of the automobile, nor the band-aid box found therein.

III. The Oklahoma Court Of Criminal Appeals Opinion Is Not In Conflict With Any Decisions Of The United States Supreme Court, And Review Of Said Opinion Is Unwarranted.

The opinion of the Oklahoma Court of Criminal Appeals in the case at bar is entirely consistent with the United States Supreme Court's decisions in *United States*

v Ross, 456 U.S. 798 (1982), *Arkansas v Sanders,* 442 U.S. 753 (1979), *United States v Chadwick,* 433 U.S. 1 (1977), *Carroll v United States,* 267 U.S. 132 (1925), as well as *Michigan v Thomas,* 458 U.S. 259 (1982), *New York v Belton,* 453 U.S. 454 (1981), *Chambers v Maroney,* 399 U.S. 42 (1970), and *Chimel v. California,* 395 U.S. 762 (1969), and no compelling justification exists to alter the prevailing law as set forth in those decisions.

—o—

CONCLUSION

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

C. Kent Eldridge*
Charles Foster Cox
500 NW 13th Street
Oklahoma City, OK 73103
(405) 235-7507
Attorneys for Respondents

*Counsel of Record